Brown, J. : — Although I think that the award of $4,000 for loss of expectation of life is high (we were told that it is the highest figure that has yet been given), I do not think that it is so high that we ought to interfere with it. But from the record it would appear that the learned Judge's reason for awarding $2,000 for pain and suffering is not established by the evidence.

The amount of damages to be awarded was in respect of the pain which the deceased suffered from the time when he was knocked down until the time when he died — and no more. Therefore, in my opinion, it can only be correct to say that the sum awarded should be the same as would have been awarded if the deceased had recovered, if we make the hypothesis that he recovered and was restored to full health and strength at the moment when he died. He suffered pain for three days — and no more. The cause of action which vested in him for pain and suffering while he was alive was limited to that period, and it was in respect of this limited period that the cause of action survived for the benefit of his estate. I understand this to be the correct reason for the reduction of the award under this head from £500 to £22 in *Rose v. Ford*[2] and I would refer to the passage from the Judgment of Lord Roche at the top paragraph of page 379.

In *Rose v. Ford*[2] the deceased survived for 4 days, during which period she was in a state of coma. In *Mills v. Stanway Coaches*[3] the deceased survived for 4 days during which she was unconscious for the greater part of the time. In that case the Court of Appeal reduced the damages from £200 to £50.

In the case which is before us the learned Judge gave as the reason for awarding $2,000 that "the deceased was conscious for nearly three days before his death." If I could assume that this was so I would not think it right to interfere with the award. But having regard to the grievous nature of his injuries I do not think that we can assume that he was allowed to suffer in the General Hospital for three days without steps being taken to alleviate his sufferings. From the record it would appear that no evidence was called upon this point. And as the respondents were claiming damages for the pain which the deceased suffered, it seems to me that the onus was upon them to prove it. In the absence of evidence I do not think we are entitled to infer that he was conscious throughout that period, and I think that in the ordinary course of hospital routine the probability is that he was not. For that reason I would reduce the award under this head from $2,000 to $500.

Appeal dismissed.

HUMES LTD. v. THE COMPTROLLER OF INCOME TAX, SINGAPORE.

[App. Civ. Juris. (Brown, J.) November 12, 1952]

[Singapore — District Court Appeal No. 23 of 1952]

Income Tax Ordinance, 1947, s. 39 — Construction — Whether "person" in s. 39(b) includes a Company —Ss. 38 and 41 explained.

This appeal raises an important question of the proper interpretation of section 39 of the Income Tax Ordinance. Under section 39(a) every company is liable to 30% tax and under section 39(b) every person not resident in the Colony is liable to 20% tax. The appellants rely upon the inclusion of a company in the definition of "person" in section 2 of the Ordinance and claim that section 39(b) includes a company not resident in the Colony.

Held: the definition of "person" in section 2 must be read subject to the introductory and overriding words "unless the subject or context otherwise requires." The context of section 39 is clear and unambigious. It must be read in conjunction with section 38, so that the word "person" in section 39(b) excludes a company.

CIVIL DISTRICT COURT APPEAL.

Dr. C. H. Withers-Payne for the appellants.

C. H. Butterfield (Solicitor-General) for the respondent.

Cur. Adv. Vult.

Brown, J. : — This appeal raises an important question of the proper construction of section 39 of the Income Tax Ordinance, viz. whether the tax payable by a company, which is not resident in the Colony, is at the rate of thirty per cent or twenty per cent on every dollar of its chargeable income.

Many authorities have been cited on both sides with a view to shewing the principles by which the Court should be guided in construing statutory enactments in tax cases. But I do not think that there can be any doubt or difficulty regarding the correct approach to this question. As in every case, it is the duty of the Court to ascertain the intention of the Legislature from the language which it has used. It is not my duty to speculate upon its intention or to insert words which the statute does not contain. If the language used is ambiguous and is capable of two reasonable constructions, it would be my duty to adopt the construction which is favourable to the taxpayer.

Section 39 provides that :—

". . . . . there shall be levied and paid for each year of assessment upon the chargeable income of —

(a) every company tax at the rate of thirty per centum on every dollar of the chargeable income thereof;

(b) every person not resident in the Colony, ... tax at the rate of twenty per centum on every dollar of the chargeable income thereof".

The appellants rely upon the inclusion of a company in the definition of "person" in section 2 of the Ordinance

and say that paragraph (b) of section 39 includes a company which is not resident in the Colony. But every definition contained in section 2 must be read subject to that section's introductory and overriding words "unless the subject or context otherwise requires."

Section 38 provides that "there shall be levied and paid for each year of assessment upon the chargeable income of every person . . . . tax at the rates set forth in the Second Schedule." Four classes of "person" are excluded from the operation of section 38. They are (1) a company, (2) a person not resident in the Colony, (3) a trustee (not being the trustee of an incapacitated person), and (4) an executor. These four classes, having been excluded from the operation of section 38, are dealt with in section 39. A company is dealt with in paragraph (a); the remaining three are dealt with in paragraph (b).

In excluding these four classes from the operation of section 38 "a company" is referred to simpliciter and without qualification. Then follows the second class of "person" to be excluded, viz. "a person not resident in the Colony." Thus it seems to me that the context of section 38 requires that "a person not resident in the Colony" must be construed as not including a company, because a company has already been excluded from the operation of the section. But this view is strengthened in section 39(a) by the use of the words "every company."

It seems to me that I have three propositions before me. First, to construe the words "every company" in paragraph (a) of section 39 as not meaning what they say and to imply the insertion of some such words as "other than a company not resident in the Colony." Such a construction would be a violation of the language used. Second, to apply to the word "person" in paragraph (b) the full extent of the definition. By this method of construction I should be saying that the Legislature has made two contradictory provisions in two successive paragraphs, and I should be disregarding the introductory words of section 2. Third, to construe the word "person" in paragraph (b) as excluding a company, thus giving effect to the introductory words of section 2 and paying regard to what I think is the clear context both of section 38 and section 39. I have no doubt that the third is the proper construction and that neither of the other two affords a reasonable alternative. In my opinion the context is clear and unambiguous.

Before concluding I think it right to refer to two points in Dr. Withers Payne's argument. In interpreting section 39 he attached considerable importance to section 41. In that section the word "person" clearly includes a company; and the effect of that section is that in paying interest on a mortgage, debenture or loan to a person not known to be resident in the Colony, a company is required to deduct twenty per cent and render an account of it to the Comptroller, although upon the construction of section 39 which I hold to be correct all companies, whether resident or not, are liable to pay tax at the rate of thirty per cent. If this is an anomaly, it is equally an anomaly for the resident company as for the non-resident company; and there is no dispute that the resident company is liable to pay tax at the rate of thirty per cent of its chargeable income under the provisions of section 39(a). The answer would appear to lie in the first proviso to section 41, whereby the Comptroller, in the case of a company, woud give notice requiring that thirty per cent instead of twenty per cent should be deducted. His other point to which I wish to refer was that upon the construction of section 39 which I hold to be correct a "body of persons" and "a Hindu Joint Family" (which are contained in the definition "person" in section 2) would not be covered. In my opinion they are clearly covered by section 38. From the operation of that section four classes of juridical persons are excluded. From that it follows that three classes fall to be dealt with by that section — (1) an individual resident in the Colony; (2) a body of persons, not being a company, whether resident or not; and (3) a Hindu Joint Family.

The appeal is dismissed with costs.

Appeal dismissed.

LEONG CHEE YEONG (f) v. CHINA INSURANCE CO., LTD. AND LEONG CHEE YEONG (f) v. THE EASTERN UNITED ASSURANCE CORPN. LTD.

[Orig. Civ. Juris. (Thomson, J.) September 23, 1952]

[Ipoh — Civil Suit Nos. 69 and 85 of 1952]

Insurance — Personal Accident Insurance Policy — Change of profession or occupation without Notice to Insurance Company — Breach of Warranty.

The deceased who signed a proposal form for a Personal Accident Insurance Policy from the Chinese Insurance Co., Ltd. and was required to state his "Profession or occupation (if more than one please state all)" answered that he was a "merchant" and in reply to the question "Is there anything hazardous about your occupation or pursuits?" he answered "No."

The policy which was issued recited that the proposal "shall be deemed to be of a promissory nature and effect and the basis of this contract and which is deemed to be incorporated herein" and that payment under the policy shall be "subject to conditions and Memoranda, if any, contained herein or endorsed hereon." Clause 5 of the conditions of the Policy provided that "the Insured shall